

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9868 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SAVJIBHAI VELJIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR YN OZA for Petitioner

MR MR ANAND, G.P. with MS HARSHA DEVANI, AGP for Respondent

Nos. 1,2, 3, 4.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 23/12/96

ORAL JUDGEMENT

Rule. Service of rule waived by Mr. M.R. Anand,
Ld. Govt. Pleader with Ms. Harsha Devani, Ld. A.G.P. for
the respondents.

2. The facts as appearing in the synopsis of the
case and dates and events set out by the petitioner would

read as under :

The petitioner is an elected member of the respondent no.3 Panchayat which came into existence from and around June 1995. He was elected as the member of the Building Committee constituted u/S. 145(4) of the Gujarat Panchayats Act, 1993 (hereinafter referred to as 'the Act'). He was also elected as a Chairman of the said Committee by virtue of the provision contained in sec. 145(6) of the Act. It is the say of the petitioner that the term of the petitioner is co-extensive with the term of the said Building Committee, which is two years as stipulated u/S. 145(9) of the Act. Hence, it is alleged that the petitioner has a right to hold the post of the Chairman of the Building Committee.

3. On or around 24/7/1996 the respondent no.2 issued notice dated 24/7/1996 u/S. 85 of the Act. The petitioner gave reply to the show cause notice and appeared before the respondent no. 2 submitting his case of defence alongwith supporting documents. It is further asserted that this Court granted bail to the petitioner in the criminal case sought to be filed against the petitioner. According to the petitioner's say the complainant herself had given an affidavit stating that she filed complaint due to pressure of her husband, due to enmity between her husband and the petitioner. In the background of these facts, it is submitted that the respondent no.2 passed impugned order suspending the petitioner from the post of Chairman of the Building Committee. The petitioner challenged the said order in Appeal filed by him u/S, 87(3) of the Act before the respondent no.1. He also moved an application for stay alongwith the appeal. By the impugned order dated 21-27/11/1996 the appeal was admitted, but the application for stay was rejected. That is how the petitioner is before this Court under Article 226 of the Constitution of India challenging the order of rejection of stay passed by the 1st respondent.

4. Heard the learned advocate for the petitioner and the learned G.P./A.G.P. appearing for the respondents. In the facts of the case it clearly appears that the petitioner has a prima-facie case before the Appellate Authority and that is why the petitioner's appeal came to be admitted by the Appellate Authority. If that is so, there was no reason for the Appellate Authority not to entertain the stay application and grant the stay till the appeal is finally decided. In that view of the matter, the impugned order rejecting the petitioner's application for stay deserves to be quashed and set aside. Hence, following order is passed :-

The impugned order rejecting the petitioner's application for stay is hereby quashed and set aside. As a necessary consequence status-quo ante with regard to petitioner's status as a Chairman of the Building Committee is restored till the petitioner's appeal is finally decided. It is hereby directed that the petitioner's appeal shall be expeditiously heard and decided. Rule made absolute accordingly. No order as to costs. D.S.P.

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